

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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PAUL PENKALSKI,

Plaintiff,

v.

Case No. 17-CV-287

CHRISTOPHER COLE, DIRECTOR OF  
THREAT INTERVENTION SERVICES  
OF THE UNIVERSITY OF WISCONSIN-  
MADISON POLICE DEPARTMENT,

Defendant.

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**ANSWER**

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Defendant Christopher Cole (“defendant”), by his attorneys, Attorney General Brad D. Schimel and Assistant Attorneys General Christopher J. Blythe and Shannon A. Conlin, responds to the Complaint as follows:

101. Answering paragraph 101, defendant neither admits nor denies the allegations in that they are legal arguments to which no response is required here and about which relevant law is the best authority.

201. Answering paragraph 201, defendant neither admits nor denies the allegations in that they are legal arguments to which no response is required here and about which relevant law is the best authority.

202. Answering paragraph 202, defendant neither admits nor denies the allegations in that they are legal arguments to which no response is required here and about which relevant law is the best authority.

301. Answering paragraph 301, defendant admits the allegations.

303. Answering paragraph 303, defendant admits that he is an adult male citizen of the United States who was at all times material hereto employed as Director of Threat Intervention Services by the University of Wisconsin-Madison Police Department. Defendant denies the remaining allegations of paragraph 303 in that they are legal arguments to which no response is required here and about which relevant law is the best authority.

401. Answering paragraph 401, defendant admits that the referenced letter was sent and admits that the complaint correctly quotes a portion of the letter. Defendant affirmatively alleges that the language of the letter speaks for itself.

402. Answering paragraph 402, defendant admits the allegations.

403. Answering paragraph 403, defendant denies that the plaintiff was given no notice and affirmatively alleges that a UW-Madison Police Department detective attempted to deliver a stalking letter to the plaintiff at his residence and attempted to speak to the plaintiff concerning a stalking allegation, but that the plaintiff refused to discuss the matter and wadded the letter up into a ball and threw it back out of his apartment. Defendant admits

that the plaintiff was not given a hearing but denies any inference that the plaintiff had a right to a hearing.

404. Answering paragraph 404, defendant admits that the complaint correctly quotes a portion of the notice, and affirmatively alleges that the language of the notice speaks for itself.

405. Answering paragraph 405, defendant denies the allegations.

406. Answering paragraph 406, defendant admits that the plaintiff made the referenced request for a hearing by a letter dated December 1, 2016.

407. Answering paragraph 407, defendant admits that the copy of the letter is attached but notes that the copy attached to the complaint is an unsigned version of the referenced letter. Defendant affirmatively alleges that, other than the missing signature, the letter is a true and correct copy.

408. Answering paragraph 408, defendant admits that a copy of the referenced letter was sent to plaintiff's attorney via email on January 5, 2017, and affirmatively alleges that the letter was mailed on January 11, 2017.

409. Answering paragraph 409, defendant admits the allegations.

501. Answering paragraph 501, defendant neither admits nor denies the allegations in that they are legal arguments to which no response is required here and about which relevant law is the best authority.

601. Answering paragraph 601, defendant denies that the plaintiff is entitled to the claimed damages.

602. Answering paragraph 602, defendant denies that the plaintiff is entitled to the claimed damages. Defendant also affirmatively alleges that there is no party to this proceeding named "Mr. Fiedler."

603. Answering paragraph 603, defendant denies that the plaintiff is entitled to the claimed relief.

701. Answering paragraph 701, defendant neither admits nor denies the allegations in that they are legal arguments to which no response is required here and about which relevant law is the best authority.

#### PRAYER FOR RELIEF

Defendant denies that the plaintiff is entitled to the relief requested.

#### AFFIRMATIVE DEFENSES

1. To the extent that Defendant Christopher Cole is being sued in his personal or individual capacity, he is protected by his official qualified immunity, *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), because at all times material hereto his conduct did not violate any clearly established and sufficiently particularized federal statutory or constitutional rights of which he reasonably would have known.

2. To the extent that this action is brought against Defendant Christopher Cole in his official capacity it is barred by the doctrine stated in *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989), holding that state

employees acting in their official capacity are not “persons” as that term is used in 42 U.S.C. § 1983.

3. To the extent that this action is brought against Defendant Christopher Cole in his official capacity it is barred by the doctrine of sovereign immunity under the Eleventh Amendment to the U.S. Constitution.

4. Any damages sustained by the plaintiff were caused by intervening and/or superseding causes over which the answering defendant had no control, including but not limited to the acts or omissions of the plaintiff.

5. Plaintiffs' complaint fails to state a claim upon which relief can be granted.

6. Defendant reserves the defense of plaintiff's failure to mitigate damages.

WHEREFORE, Defendant Christopher Cole respectfully asks the Court to DISMISS this cause of action brought pursuant to 42 U.S.C. § 1983, and to DENY all requests for relief.

Dated this 19<sup>th</sup> day of April 2017.

BRAD D. SCHIMEL  
Wisconsin Attorney General

s/ Christopher J. Blythe  
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